

ORDERED.

Dated: June 16, 2022



Catherine Peek McEwen  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
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In re:

Case No. 8:20-bk-06021-CPM

Matthew David Dean and  
Aaron Dwayne Dean,

Chapter 13

Debtor.

**ORDER ON ORDER TO FREEDOM MORTGAGE  
CORPORATION AND CHOICE LEGAL GROUP, P.A. TO  
SHOW CAUSE WHY COURT SHOULD NOT IMPOSE SANCTIONS**

THIS CASE came on for hearing on August 10, 2021, for consideration of the Court's Order (the "Show Cause Order") (Doc. No. 73) to Freedom Mortgage Corporation ("Freedom") and Choice Legal Group, P.A. to appear and show cause why the Court should not impose sanctions based on the conduct described in the Debtors' Motion for Order Directing Freedom Mortgage Corporation and Choice Legal Group, P.A., to Show Cause Why They Should Not be Held in Contempt and Subject to Sanctions (Doc. No. 57).<sup>1</sup> The Court held a further hearing on May 18, 2022, to announce its ruling.

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<sup>1</sup> The Debtors' motion for sanctions and Freedom's response thereto (Doc. No. 66) were the subject of a prior hearing on May 26, 2021.

For the reasons stated orally and recorded in open court that shall constitute the decision of the Court, the Court finds that Freedom violated the automatic stay under 11 U.S.C. § 362(a) by sending monthly mortgage statements to the Debtors that (i) showed a payment amount that exceeded what the Debtors owed under their Chapter 13 Plan, which initially provided for adequate protection payments and was later amended to reflect payments due under a (then temporary) mortgage modification agreement, and (ii) included a payment coupon together with payment instructions. Once the Debtors filed their Chapter 13 Plan, they were no longer obligated to pay Freedom the pre-petition monthly payment amount owed under the parties' mortgage agreement. Instead, they became obligated to pay Freedom (through the Chapter 13 Trustee) the monthly amount payable under their Plan. Yet, Freedom continued to send monthly statements to the Debtors post-petition that reflected the original contract amount, and it misrepresented to the Court that it was required to do so under applicable non-bankruptcy law. In fact, there is no such requirement. Applicable law permitted Freedom to limit the amount due information on its statements to the Debtors to the amount due post-petition<sup>2</sup> (which was less than the contract amount). Thus, Freedom's duty to send periodic statements containing other information for residential mortgage loans does not insulate Freedom from liability.<sup>3</sup> Further, Freedom's inclusion

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<sup>2</sup> See 15 U.S.C. § 1638(f) of the Truth in Lending Act (TILA). See also 12 C.F.R. § 1026.41(f) of Regulation "Z" (periodic statements sent to chapter 12 and chapter 13 debtors may omit delinquency information otherwise required under § 1026.41(d)(8), and "the amount due information . . . may be limited to the date and amount of the *post-petition payments due* and any post-petition fees and charges imposed by the servicer") (emphasis added).

<sup>3</sup> In a case decided after the Court announced its ruling on May 18, 2022, the Eleventh Circuit considered as a matter of first impression whether monthly mortgage statements required under TILA and related regulations could constitute communications "in connection with the collection of a debt" under the Fair Debt Collection Practices Act and the Florida Consumer Collection Practices Act. *Daniels v. Select Portfolio, Inc.*, No. 19-10204, 2022 WL 1639012, \*1 (11th Cir. May 24, 2022) (statutory citations omitted). There, the court declined to accept Select Portfolio's argument that *any* conduct or communications required by TILA and its regulations cannot be actionable under the FDCPA as a communication in connection with the collection of a debt. *Id.* at \*8 (emphasis added).

of bankruptcy notices/disclaimers in the monthly statements at issue does not prevent a finding that they were efforts to collect a debt,<sup>4</sup> especially since the statements' reflected a "payment amount" greater than what the Debtors were obligated to pay at the time.

Accordingly, it is

**ORDERED:**

1. As appropriate damages under 11 U.S.C. § 362(k) for Freedom's violation of the stay, Debtors' counsel is entitled to recover from Freedom her reasonable attorney's fees incurred as a result of the Debtors' receipt of the monthly mortgage statements complained about, including fees for time spent alleviating the Debtors' concerns and confusion as to the correct amount of the mortgage payment they owed each month, communicating with Freedom to request that it correct its statements, drafting the Debtors' motion for sanctions and related filings, and preparing for and attending related hearings.
2. Within 14 days of entry of this order, Debtors' counsel shall file her fee application using the Court's negative notice procedures under Local Rule 2002-4.
3. The Show Cause Order is discharged favorably to Choice Legal Group, P.A.

The Clerk is directed to serve a copy of this order on Freedom Mortgage Corporation and Choice Legal Group, P.A., and any interested parties who are not CM/ECF filers.

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<sup>4</sup> See *Cousins v. CitiFinancial Mortgage Co. (In re Cousins)*, 404 B.R. 281 (Bankr. S.D. Ohio 2009) (disclaimer identifying mortgage statement as informational and not as attempt to collect a debt did not prevent finding that mortgagee violated the stay where debtor's chapter 13 plan dictated payment terms and inclusion of payment coupon served "no other purpose the court can conceive except to collect the debt outside of the bankruptcy case"). Cf. *McCamis v. Servis One, Inc.*, 2016 WL 4063403, \*3 (M.D. Fla. July 29, 2016) (disclaimer stating mortgage statements are informational if debtor is in bankruptcy or has received a discharge insufficient as a matter of law to shield mortgagee from liability under FDPCA and FCCPA for "debt collection" where statements included amount due, payment due date, delinquency notice, and payment coupon) (citations omitted). Although neither of these cases involves a TILA defense, they demonstrate that disclaimers do not necessarily prevent a finding that mortgage statements may constitute attempts to collect a debt.